

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

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| ERNEST D. NEWMAN | § | |
| VS. | § | CIVIL ACTION NO. 9:17-CV-108 |
| WARDEN HARRIS, ET AL. | § | |

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Ernest D. Newman, a prisoner currently confined at the Estelle Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Warden Harris, Warden Lamb, M. Neuman, Lieutenant Beverly, and Sergeant Tolley.

The Court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge entered a Report and Recommendation. The Magistrate Judge recommended denying plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g) and dismissing the action unless plaintiff paid the \$400 filing fee within fourteen days after the Report and Recommendation was entered.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the

objections are without merit. Because plaintiff has accumulated three “strikes,” he is not eligible to proceed *in forma pauperis* unless he was in imminent danger of serious harm at the time the action was filed. For the reasons stated by the Magistrate Judge, plaintiff has not met this burden. Therefore, he is not eligible to proceed *in forma pauperis*.

ORDER

Accordingly, plaintiff’s objections (document no. 27) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 25) is **ADOPTED**. The order granting plaintiff leave to proceed *in forma pauperis* (document no. 18) is **VACATED**. A final judgment will be entered in this case in accordance with the Magistrate Judge’s recommendations. The Clerk of Court shall forward a copy of this order to: TDCJ-CID Litigation Support Program, Attention: Program Administrator, P.O. Box 13084, Capitol Station, Austin, Texas 78711, and to TDCJ-CID Local Funds Division, Attention: Chris Koenig, P.O. Box 629, Huntsville, Texas 77342-0629.

So Ordered and Signed

May 27, 2018



Ron Clark, United States District Judge